



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0056]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 12 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2018-0056 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2018-0056), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2018-0056, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2018-0056, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the

system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver’s medical certification.

The 12 individuals listed in this notice have requested an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *H. Epilepsy: § 391.41(b)(8)*, paragraphs 3, 4, and 5.]

¹ See http://www.ecfr.gov/cgi-bin/text-id.x?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a and <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

The advisory criteria states the following:

If an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the Medical Examiner in consultation with the treating physician. Before certification is considered, it is suggested that a six-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a five-year period or more.

As a result of Medical Examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication,

rather than an individual analysis of their circumstances by a qualified Medical Examiner based on the physical qualification standards and medical best practices.

On January 15, 2013, FMCSA announced in a Notice of Final Disposition titled, Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders, (78 FR 3069), its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” Since the January 15, 2013 notice, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in 49 CFR 391.41(b)(8).

To be considered for an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency’s Medical Expert Panel (MEP) (78 FR 3069).

III. Qualifications of Applicants

Mitchell A. Bowles

Mr. Bowles is a 37-year-old class C driver in Georgia. He has a history of epilepsy and has been seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since 2012. His physician states that he is supportive of Mr. Bowles receiving an exemption.

Michael C. Davis, Jr.

Mr. Davis is a 31-year-old class B CDL holder in South Carolina. He has a history of a seizure disorder and has been seizure free since 1999. He stopped taking anti-seizure

medication in 2001. His physician states that he is supportive of Mr. Davis receiving an exemption.

Richard E. Davis

Mr. Davis is a 47-year-old class A CDL holder in California. He has a history of a seizure disorder and has been seizure free since 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since 2002. His physician states that he is supportive of Mr. Davis receiving an exemption.

Nicolas Donez Jr.

Mr. Donez is a 54-year-old class R driver in Colorado. He has a history of epilepsy and has been seizure free since August 2001. He stopped taking anti-seizure medication in 2002. His physician states that he is supportive of Mr. Donez receiving an exemption.

Scott D. Engleman

Mr. Engleman is a 54-year-old class CM driver in Pennsylvania. He has a diagnosis of epilepsy and has been seizure free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since 2008. His physician states that he is supportive of Mr. Engleman receiving an exemption.

Everett J. Letourneau

Mr. Letourneau is a 46-year-old class D driver in Minnesota. He has a history of epilepsy and has been seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since 2010. His physician states that he is supportive of Mr. Letourneau receiving an exemption.

Jason D. Lewis

Mr. Lewis is a 42-year-old class C driver in California. He has a history of a seizure disorder and has been seizure free since 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since 2012. His physician states that he is supportive of Mr. Lewis receiving an exemption.

Johnny L. Ricks

Mr. Ricks is a 54-year-old class B CDL holder in Georgia. He has a history of a seizure disorder and has been seizure free since 1998. He takes anti-seizure medication with the dosage and frequency remaining the same since 1998. His physician states that she is supportive of Mr. Ricks receiving an exemption.

Isaac E. Rogers

Mr. Rogers is a 32-year-old class B CDL holder in Illinois. He has a history of a seizure disorder and has been seizure free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since 2009. His physician states that he is supportive of Mr. Rogers receiving an exemption.

Donald J. Smith

Mr. Smith is a 34-year-old Class B CDL holder in New York. He has a history of epilepsy and has been seizure free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since 2011. His physician states that he is supportive of Mr. Smith receiving an exemption.

Lucas T. Sorey

Mr. Sorey is a 25-year-old class A CDL holder in North Carolina. He has a history of epilepsy and has been seizure free since 2010. He was gradually tapered off medication,

which was discontinued in 2017. His physician states that he is supportive of Mr. Sorey receiving an exemption.

Ronald E. Wagner

Mr. Wagner is a 46-year-old class D driver in Ohio. He has a history of epilepsy and has been seizure free since 2003. He takes anti-seizure medication with the dosage and frequency remaining the same since 2011. His physician states that he is supportive of Mr. Wagner receiving an exemption.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

Issued on: October 17, 2018.

Larry W. Minor,
Associate Administrator for Policy.

[FR Doc. 2018-23326 Filed: 10/24/2018 8:45 am; Publication Date: 10/25/2018]